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UNITED STATES OF AMERICA
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12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 JOSE ARVISO,

18 Defendant.
19
20

No. CR 17-00018-CAS-1

GOVERNMENT'S OPPOSITION TO
DEFENDANT'S MOTION IN LIMINE TO
EXCLUDE CONTRABAND

Hearing Date: December 20, 2021
Hearing Time: 1:00 p.m.
Location: Video Teleconference
Before the Hon.
Christina A. Snyder

21 Plaintiff United States of America, by and through its counsel
22 of record, the United States Attorney for the Central District of
23 California and Assistant United States Attorneys Anna P. Farias-
24 Eisner and Maria Jhai, hereby files its Opposition to Defendant's
25 Motion in Limine to Exclude Contraband. (Dkt. 239.)

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1 This Opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 Dated: December 13, 2021

Respectfully submitted,

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 Chief, Criminal Division

9 /s/ Anna Farias-Eisner
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

On December 1, 2021, defendant Jose Arviso ("defendant") filed a Motion in Limine to Exclude Contraband (Dkt. No. 239, "Def. MIL No. 2").¹ The methamphetamine seized from defendant on March 25, 2016, will be properly authenticated and identified by lay and expert witnesses who will lay the proper foundation and testify to the nature and preservation of the methamphetamine, and defendant's objections are therefore premature. Additionally, because the record is devoid of any evidence either that the methamphetamine was tampered with or to overcome the presumption that the law enforcement officers properly discharged their official duties in handling the evidence, the methamphetamine is admissible. Defendant's motion should be denied.

II. STATEMENT OF FACTS

As discussed in more detail in the government's opposition to Def. MIL No. 1, on March 25, 2016, defendant and his co-defendants, who have since plead guilty to the charged crimes, were arrested pursuant to outstanding arrest warrants. Upon arrest, defendant was found in possession of approximately 58.165 grams of pure methamphetamine, a loaded Smith and Wesson pistol, approximately \$289 in cash, a Dodge Challenger car key, and additional incriminating evidence related to the charged crimes in the First Superseding Indictment. Defendant has already pled guilty to all charges in the First Superseding Indictment except for Count Eight: possession with

¹ Defendant also filed a Motion in Limine to Exclude LAPD Officers from Testifying Re: Probable Cause (Dkt. 238, "Def. MIL No. 1"), which the government opposes in a separate filing.

1 intent to distribute methamphetamine, in violation of 21 U.S.C.
 2 §§ 841(a)(1), (b)(1)(A)(viii). A trial is set for January 11, 2022,
 3 against defendant for Count Eight.

4 **III. ARGUMENT**

5 Defendant moves to "exclude[e] any evidence related to the
 6 contraband seized and contributed to Mr. Arviso" because defendant
 7 claims that the government "cannot authenticate the alleged drugs
 8 seized" and "cannot establish change in custody."² (Def. MIL No. 2,
 9 at 1, 3.)³ Defendant's motion should be denied because the physical
 10 evidence of methamphetamine will be properly authenticated through
 11 lay and expert testimony, because his objection is premature, and
 12 because there is no evidence on the record suggesting that the chain
 13 of custody has been tampered.

14 **A. Lay and Expert Witnesses will Lay the Proper Foundation and** 15 **Properly Authenticate the Methamphetamine**

16 The methamphetamine seized from defendant on March 25, 2016,
 17 will be properly authenticated and identified through lay and expert
 18

19 ² Defendant states that his "motion is based on Fed. R. Evid.
 20 401-403, 801-803 and 901, the Sixth Amendment Confrontation Clause,
 21 Defendants' presumption of innocence, and the fact that the hearsay-
 22 reliant testimony constitutes impermissible vouching." (Def. MIL
 23 No. 2, at 1.) However, nowhere else in his motion does he explain
 24 how Federal Rules of Evidence 401-403 and 801-803, the Sixth
 25 Amendment Confrontation Clause, the presumption of innocence, or
 26 vouching are at all applicable to his Rule 901 motion. Accordingly,
 27 defendant fails to properly raise these arguments and his motion on
 28 these bases should be summarily denied.

³ In Sections I(A), (B), and (C) of his motion, defendant also
 repeats the same arguments raised in Def. MIL No. 1, arguing to
 exclude LAPD officers' testimony because they are "not percipient
 witnesses to probable cause of any of the allegations" and claiming
 that the government failed to produce CDCR reports. (Def. MIL No. 2,
 at 4-6.) Because these arguments relate to Def. MIL No. 1, the
 government does not discuss them herein and opposes these arguments
 in its concurrently filed opposition to Def. MIL No. 1.

1 testimony at trial.⁴ Federal Rule of Evidence 901(a) provides that
2 "[t]o satisfy the requirement of authenticating or identifying an
3 item of evidence, the proponent must produce evidence sufficient to
4 support a finding that the item is what the proponent claims it is."
5 Under Rule 901(a), evidence should be admitted, despite any
6 challenge, once the government makes a prima facie showing of
7 authenticity or identification so "that a reasonable juror could find
8 in favor of authenticity or identification . . . [because] the
9 probative force of the evidence offered is, ultimately, an issue for
10 the jury." United States v. Chu Kong Yin, 935 F.2d 990, 996 (9th
11 Cir. 1991) (citations and internal quotation marks omitted); see also
12 United States v. Gadson, 763 F.3d 1189, 1204 (9th Cir. 2014).

13 This requirement "'does not erect a particularly high hurdle,'
14 and the proponent of the evidence is not required 'to rule out all
15 possibilities inconsistent with authenticity, or to prove beyond any
16 doubt that the evidence is what it purports to be.'" United States
17 v. Dhinsa, 243 F.3d 635, 658 (2d Cir. 2001) (citations omitted). The
18 authenticity of proposed exhibits may be proven by circumstantial
19 evidence. See United States v. King, 472 F.2d 1, 9-11 (9th Cir.
20 1972). If the government makes the prima facie showing of
21 authenticity, the Court should admit the evidence. See Yin, 935 F.2d
22 at 996; United States v. Black, 767 F.2d 1334, 1342 (9th Cir. 1985).

23
24
25 ⁴ To the extent that defendant argues to exclude any evidence
26 (other than the methamphetamine) seized from defendant and his co-
27 conspirators on March 25, 2016, this argument should also be denied
28 as meritless. As addressed in the government's opposition to Def.
MIL No. 1, the evidence seized from defendant and his co-conspirators
on March 25, 2016, is inextricably intertwined with the illegal
conduct of possessing with intent to distribute methamphetamine and
thus is admissible.

1 The credibility or probative force of the evidence offered is
2 ultimately an issue for the trier of fact. Yin, 935 F.2d at 996.

3 Rule 901(b) provides specific examples but clarifies that it is
4 "not a complete list." The examples include testimony of a witness
5 with knowledge that the "item is what it is claimed to be," and a
6 comparison with an authenticated specimen by an expert witness. Fed.
7 R. Evid. 901(b)(1), (3). Authentication "can be accomplished without
8 the direct testimony of either a custodian or percipient witness."
9 United States v. Paulino, 13 F.3d 20, 23 (1st Cir. 1994).

10 Here, the government anticipates calling Los Angeles Police
11 Department ("LAPD") Crime Impact Team ("CIT") Officer Manuel Mejia to
12 testify as a lay witness (see Gov. Opp. to Def. MIL No. 1 regarding
13 admissibility of lay witness testimony) that, inter alia, he seized
14 the methamphetamine from defendant's black and purple satchel on
15 March 25, 2016. Furthermore, the government intends to call Forensic
16 Chemist Kimberlie Ross to provide expert testimony regarding her
17 analysis of the drugs and her opinion that the drugs seized from
18 defendant on March 25, 2016, consists of approximately 58.165 grams
19 of pure methamphetamine. This evidence overcomes the low hurdle for
20 the government establishing its prima facie case of authenticity or
21 identification and thus the evidence is admissible under Rule 901.

22 **B. The Methamphetamine has a Proper Chain of Custody**

23 Defendant's challenges to the chain of custody of the
24 methamphetamine seized from defendant on March 25, 2016, are
25 meritless. Federal Rule of Evidence 901(a) provides that "[t]o
26 satisfy the requirement of authenticating or identifying an item of
27 evidence, the proponent must produce evidence sufficient to support a
28 finding that the item is what the proponent claims it is." Fed. R.

1 Evid. 901(a). Rule 901(a) only requires the government to make a
2 prima facie showing of authenticity or identification "so that a
3 reasonable juror could find in favor of authenticity or
4 identification." Yin, 935 F.2d at 996 (quoting United States v.
5 Blackwood, 878 F.2d 1200, 1202 (9th Cir. 1989) (per curiam)). Once
6 the government meets this burden, "the credibility or probative force
7 of the evidence offered is, ultimately, an issue for the jury."
8 Black, 767 F.2d at 1342.

9 To be admitted into evidence, a physical exhibit must be in
10 substantially the same condition as when the crime was committed.
11 Fed. R. Evid. 901. The Court may admit the evidence if there is a
12 "reasonable probability the article has not been changed in important
13 respects." United States v. Harrington, 923 F.2d 1371, 1374 (9th
14 Cir. 1991) (quoting Gallego v. United States, 276 F.2d 914, 917 (9th
15 Cir. 1960)). Factors the Court may consider in making this
16 determination include the nature of the item, the circumstances
17 surrounding its preservation, and the likelihood of intermeddlers
18 having tampered with it. Gallego, 276 F.2d at 917.

19 In establishing chain of custody as to an item of physical
20 evidence, the government is "not required to call the custodian of
21 the evidence." Harrington, 923 F.2d at 1374. Furthermore, "[t]here
22 is no rule requiring the prosecution to produce as witnesses all
23 persons who were in a position to come into contact with the article
24 sought to be introduced in evidence." Gallego, 276 F.2d at 917.
25 Rather, a presumption of regularity exists in the handling of
26 exhibits by public officials. Id. In the absence of evidence of
27 tampering, there is a presumption that public officers have properly
28 discharged their official duties. Id. Therefore, to the extent that

1 alleged or actual gaps in the chain of custody exist, such gaps go to
2 the weight of the evidence rather than to its admissibility.

3 Harrington, 923 F.2d at 1374.

4 Here, based on the nature and preservation of the
5 methamphetamine and the lack of any evidence suggesting it was
6 tampered with, it is admissible. Moreover, as discussed above, the
7 government will establish the authenticity and identification of the
8 methamphetamine at trial through LAPD Officer Mejia's lay testimony
9 and Forensic Chemist Ross's expert testimony. This is more than
10 sufficient to lay the proper foundation to admit this evidence at
11 trial.

12 Defendant argues that the government cannot authenticate or
13 explain the chain of custody because the property report "has clearly
14 crossed out the name of Arviso and replaced it with Olivia Uribe."
15 (Def. MIL No. 2, at 2.) First, this is irrelevant to proving a
16 "reasonable probability the article has not been changed in important
17 respects." Gallego, 276 F.2d at 917. Regardless, the government
18 expects that LAPD Officer John Hackman, who booked the
19 methamphetamine into evidence, will testify that all the evidence
20 seized on March 25, 2016, including from defendant, co-defendant
21 Uribe, and co-defendant Cobarrubias was booked under the file name
22 "Uribe." Defendant fails to provide any evidence contesting the
23 nature and integrity of the methamphetamine nor to suggest that the
24 methamphetamine was tampered with in anyway. Nor can he. The
25 testimony will be clear that the 58.165 grams of pure methamphetamine
26 seized from defendant's black and purple satchel were attributable
27 only to defendant and not to the other co-defendants. Even if there
28 were any gaps in the chain of custody (there were not), it would go

1 to the weight of the evidence, not to its admissibility.
2 Accordingly, the authentication, foundation, nature, preservation,
3 and lack of tampering with the methamphetamine establish that the
4 chain of custody is proper, and the evidence is admissible.

5 **IV. CONCLUSION**

6 For these reasons, defendant's motion in limine should be
7 denied.